

To: County Board Supervisors
Daniel Lowndes, Risk Manager and Records Control Officer
From: Brenda K. Konkel
Re: Open records request regarding Sub,1 to Res-284 & Res-285, the 2020 Operating and Capital Budgets
Date: 1/12/2020

This document contains background information about communications that have been had on this issue, a statement about my goals for this request and 3 alternatives to get the information requested. At this point, I'd be happy to get the information I requested nearly 10 weeks ago in whatever form you would like to give it to me in, and I will make any follow up requests if they are necessary.

BACKGROUND

On November 6th I submitted an open records request regarding the 2020 budget process. After waiting 64 days for a request, the request was denied with a suggestion to resubmit with additional information.

First Request

On November 6th at 9:35 I sent the following open records request to County Board Chair Sharon Corrigan, Supervisor and Personnel and Finance Committee Chair Patrick Miles, County Board Staff Karin Thurow-Peterson and County Controller Chuck Hicklin:

Please send all records, electronic or written, including texts, emails, and other correspondence sent through county or personal devices and accounts, regarding the process and content for the substitute resolutions for the Operating and Capital Budgets and the final tax levy resolution. Additionally, please send any records (as described above) related to "revised" amendments that were presented to Personnel and Finance at the November 5th Personnel and Finance Committee Meeting.

Any questions, please do not hesitate to ask.

I did not get any response or an acknowledgement of my request from the staff or the elected officials.

Second Request

On December 15th, at 8:12 am I sent a second request to the same recipients:

It's been 5 weeks since I submitted this request. Can you provide me with an update on any progress made or when to expect a response?

Thank you.

I did not get any response or acknowledgement of my request from the staff or the elected officials.

Third Request

On January 4th at 1:04pm I sent the following response to Dan Lowndes, the Risk Manager and Records Control Officer's email he had sent me on another matter. He had replied to an open records request I had made on November 5th regarding a different, but likely related matter.

Could you tell me when I might expect a response to my second open records request sent the day after this one? I asked on December 15th and no one replied.

Thank you!

I did not get a response until Friday, 1/10/20 when my request was denied.

Response/Partial Denial

On January 10th at 4:07p.m. I finally received a [partial denial](#) of my request. I consider it a partial denial because it is my understanding that the elected officials are the keepers of their own records and should have their own systems to retrieve them. The partial denial can be summarized as follows:

First, Wis. Stats. § 19.35(1)(h) requires requests for records to reasonably describe the requested records. I have consulted with our Division of Information Management within the Department of Administration and learned that Dane County cannot search for emails pertaining to a **general topic** the way an internet search engine can search for web pages. Specifically, Information Management cannot search for emails about *“the substitute resolutions for the Operating and Capital Budgets”* or *“the final tax levy resolution”* or *“revised” amendments that were presented to Personnel and Finance at the November 5th Personnel and Finance Committee Meeting.* Therefore, based upon Wis. Stat. § 19.35(1)(h), I must deny your request.

I disagree with this interpretation. The [October 2019 Attorney General's Wisconsin Public Records Law Compliance Guide](#) states on page 14 clearly states both of the following:

- “Magic words” are not required. A request which reasonably describes the information or record requested is sufficient.⁹¹
- A request is sufficient if it is directed at an authority and reasonably describes the records or information requested.⁹³

The denial also included the following:

Second, Dane County is not the custodian of records sent to or from **personal** devices unless those documents were sent from or received by a county email address, in which case, they would be found using the email search described above. Therefore, to the extent that a response is required to this part of your request, it is denied.

Finally, records relating to the Operating and Capital Budgets and Personnel and Finance committee meetings are available to the public here: <https://dane.legistar.com/Legislation.aspx>. To the extent that your request is for additional copies of those documents, it is denied as those records are readily available on the County's website. See page 6 of the Wisconsin Attorney General's Guidance on Wisconsin's Public Records Law (available here: <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>) citing **Stone v. Board of Regents**, 741 NW 2d 774 (Wis: Court of Appeals 2007).

While I understand that county staff requested to fulfill this request do not have access to personal records, on page 59 of the Compliance guide mentioned above it is clear that these are still records, which are required to be kept by the County Board Supervisors as follows:

Electronically stored information generally constitutes a “record” within the meaning of the public records law so long as the recorded information is created or kept in connection with official business. **The substance, not the format, controls whether it is a record or not.**⁴²⁶

o Emails and other records created or maintained on a personal computer or mobile device, or from a personal email account, constitute records if they relate to government business. ⁴²⁷

Response/Additional Directions

The response did include instructions about how I could have my request fulfilled as follows:

However, in the spirit of open government, please feel free to supply us with the **names** of the individuals whose *countyofdane.com* email you would like searched as well as **search terms** that Information Management may use to search for emails responsive to your request. In other words, you could tell us the exact terms you want to see in requested emails, then use the word “and” or the word “or” between the terms you have identified so that Information Management can conduct an email search.

Please know that after we receive your revised request, Dane County will review the search results and Dane County may redact parts of certain e-mails containing information that is exempted from disclosure. Materials that may be withheld or redacted include drafts, preliminary computations, and personal notes prepared for the

drafter's personal use and have no relation to the drafter's office. Such documents are not "records" as that term is used in Wisconsin's Public Records Law, and, therefore, are not subject to disclosure.

GOAL OF THE OPEN RECORDS REQUEST

I am including the goal of the open records request so that you may know the full intent and to aid in your response.

On Nov 5th I submitted a separate open records request regarding the chair's meetings. I was led to believe that these were the meetings where Sub. 1 was discussed. There are no agendas or minutes of these meetings to confirm. As such, I am continuing my efforts to determine who decides what is in, and what is out of Sub. 1 to the Capital and Operating Budgets. Every year the county board goes through a process where Supervisors make amendments to the County Executive proposed budget. The amendments are brought before various committees, the committees vote and then the amendments are brought (or not) before the Personnel and Finance Committee. Personnel and Finance then hears from all the committee chairs about all the amendments, asks a few questions but doesn't discuss alternatives or priorities or how much they want to spend up to the levy limit. What happens next is a mystery. Someone makes decisions, with unknown goals and priorities and clearly with the input of others and then a Sub 1 appears for both the Capital and Operating Budgets. The Sub 1 amendments typically are passed without any public discussion by the supervisors regarding what is in or out of the package of changes. There are few, if any, alternatives or amendments. It then goes to the County Board again with little to no discussion or amendments. All of the decision making about what appears in the Sub 1 amendments for the operating and capital budgets is done outside of the public eye.

This year, the following changes appeared in Sub 1 that I am interested in finding records about because there was little to no public discussion or debate about these items. I am specifically trying to determine:

- Who decided and how was it decided to amend the following amendments that were in Sub 1:
 - PWT-C-01-Revised
 - PWT-C-03-Revised
 - P&F-C-05-Revised
 - HHN-C-01-Revised
 - EANR-C-03-revised
 - Exec-O-03-revised
 - PP&J-O-01-revised
 - PP&J-O-02-revised
 - PP&F-O-03-revised
 - PP&J-O-08-revised
 - HHN-O-04-revised
 - HHN-O-06-revised
 - HHN-O-10-revised
 - HHN-O-11-revised
 - HHN-O-12-revised
 - HHN-O-13-revised
 - EANR-O-02-revised
 - EANR-O-03-revised
 - PWT-O-01-revised
- Who decided and how was it decided to remove the following amendments:
 - PP&J-O-04
 - PP&J-O-07
 - HHN-O-01
 - HHN-O-03
 - HHN-O-09
 - PWT-O-03
 - P&F-O-02
 - P&F-C-01
 - P&F-C-03
- Who decided and how was it decided to add new amendments
 - P&F-O-04
 - P&F-O-05
 - P&F-C-03
 - P&F-C-05

ALTERNATIVE REQUESTS

Obviously, its difficult to craft an open records request with search terms that gets to the answer to those questions. Indeed, I don't think I should be required to provide it. However, I simply want the information, not an argument about who is right or wrong. I have a few alternatives for you to choose from to get the information I am looking for. I would be happy to discuss the pros and cons of each with you.

I am requesting that you reconsider alternative 1. If alternative 1 remains denied, I would ask for alternative 2. If alternative 2 is denied, please let me know and I will proceed with sending you the search terms for alternative 3. I have removed County Board Staff and the Controller from the request and instead included all supervisors which would include emails to and from staff.

Alternative One:

Supervisors Sharon Corrigan and Patrick Miles provide all records, electronic or written, including texts, emails, and other correspondence sent through county or personal devices and accounts, regarding the process and content for the substitute resolutions for the Operating and Capital Budgets and the final tax levy resolution. Additionally, please send any records (as described above) related to "revised", excluded or new amendments that were presented to Personnel and Finance at the November 5th Personnel and Finance Committee Meeting.

This could be done with a simple search of their records between October 1 and November 11th, 2019. Since they are own their record keepers as elected officials and they were party to the communications, this seems to be the easiest of the solutions. However, I understand that request to be denied because the county staff does not have access to their personal accounts and you need search terms.

Alternative Two:

This alternative would have two separate requests. The second request has two options. Please treat this as two separate requests that can be answered or denied individually.

Alternative Two - Request #1

Search all county board supervisor email records (I will provide you a list of their names if that is needed) between October 1 and November 11th 2019 for the following search terms - these are "or" not "and" requests and the words are not case sensitive -related to the 50 amendments that were put forward in consideration for Sub 1 for each of the Operating and Capital Budgets:

Budget	HHN-O-05	endres farm
Amendment	HHN-O-06	yahara
Sub. 1	HHN-O-07	flood
Res-284	HHN-O-08	Agroforestry
Res-285	HHN-O-09	row cropping
P&F-O-01	HHN-O-10	organic farming
P&F-C-01	HHN-O-11	Zoo
F&F-C-02	HHN-O-12	Zoo Manager
ZLR-O-01	HHN-O-13	Zoo Keeper
EANR-O-01	HHN-C-01	Janitor
EANR-O-02	PP&J-O-01	Scholarship
EANR-O-03	PP&J-O-02	educational programs for children and youth
EANR-C-01	PP&J-O-03	Airport
EANR-C-02	PP&J-O-04	PFAS
EANR-C-03	PP&J-O-05	Testing
PWT-O-01	PP&J-O-06	Remediation
PWT-O-02	PP&J-O-07	schematic designs
PWT-O-03	PP&J-O-08	Phase 1 redevelopment
PWT-C-01	PP&J-C-01	Exhibition hall
PWT-C-02	P&F-O-04	Alliant Energy Center
PWT-C-03	P&F-O-05	redevelopment planning
PWT-C-04	Information Management Specialist II	breastfeed
P&F-C-03	Dane County Housing Authority	Report
Exec-O-01	DCHA	highway trucks
Exec-O-02	affordable housing	CTH G
Exec-O-03	Bayview Foundation	CTH A
Exec-C-01	Housing Summit	STH 92
Exec-C-02	Tree Board	County highway G
P&F-O-02	Food System Coordinator	County highway A
P&F-O-03	Video	State Highway 92
HHN-O-01	roberts rules of order	lobbying services
HHN-O-02	parliamentary procedure	legislative services
HHN-O-03	compost turner	Software
HHN-O-04	Spreader	

Legistar	Homeless	justice center
Streaming	category 3	Cjc
staffing study	Hotel	criminal justice council
limited term employees	focused interruption	exercise equipment
Remodel	FIC	Detention
Consolidate	rape crisis center	Increase contract lobbyist line
meeting room	RCC	Increase software maintenance line
office of county board	needle exchange	Audit funds
Decarceration	CJ Tubbs	Eliminate \$3
Consultant	mental health	Paid time off
per diems	Salvation Army	Feasibility study
Kassel	Shelter	4/1/20
intern	Prp	Youth mentoring
early childhood zone	parental representation project	Committee process videos
sugar creek	Attorneys	Communications intern
verona	Abuse	POS agency equity
Outreach	Neglect	Human Services reserve
Aoda	Chips	Reserve fund
Homelessness	children in need of protective services	Ex-hall
lgbtq	victim witness	Project management
community center	juvenile	Lactation
program leader	restorative justice	Pwt
restorative court	state bar	Snow plow
senior nutrition	Dues	Third floor
eviction	law clerks	Affordable housing development fund
homeless services consortium	paid holidays	Ahdf
Hsc	home detention	Friends groups
esg	fees	Matching funds
back to the table	Overtime	Silverwood Park
youth justice	uniformed deputy	ep
sun prairie	public engagement	
navigators	needs assessment	

Alternative Two - Request #2 - Option A

Have the County Board Supervisors search their personal communications between October 1 and November 11, 2019 and send all records, electronic or written, including texts, emails, and other correspondence sent through personal devices and accounts, regarding the process and content for the Sub 1 resolutions for the Operating and Capital Budgets and the final tax levy resolution.

This option would allow the supervisors discretion to search their emails, social media and apps and use their judgement about what should be included without going through the tedious task of searching for each of the search terms.

Alternative Two - Request #2 - Option B

Have the elected County Board Supervisors search their personal communications and send all records, electronic or written, including texts, emails, and other written or electronic correspondence sent through personal devices and accounts between October 1 and November 11, 2019 for the search terms requested in Alternative One - these remain "or" not "and" requests and not case sensitive - related to the 50 budget amendments put forward for consideration in Sub. 1 for each of the operating and capital budgets.:

Alternative Three

If you choose to deny

- Alternative 1; and
- Alternative 2
 - Request 1
 - Request 2 (option A and B)

then I would proceed with the Alternative 3 which would result in 2 request for each of the amendments listed below with two options for the 2nd request. This would result in 64 requests - 32 for county staff and 32 for each of the supervisors. Each of these 32 amendments would have 2 requests as follows:

- Request of the county to search the emails of all county board supervisors for the search terms related to each of the amendments listed below
- Request of each of the elected officials to search their personal records with the same options as provided in Alternative 2 - Request 2.

If you choose alternative 3 I will clean up the list of search terms and indicate which search terms are related to each of the amendments listed in the goal section. For option 2 I removed duplicates and simplified terms for the large list and I will need to verify where I need to duplicate the search terms.

CONCLUSION

I leave it to each individual supervisor to provide me with records related to what would be included in Sub. 1 to the 2020 Operating (Res-284) and Capital Budgets (Res-285) and how those decisions were made. If you provide me with information that meets the spirit of this request, your name will be excluded from further requests and communications regarding Sub 1 to the 2020 Operating and Capital Budgets. I apologize for this inconvenience. If county board leadership had replied in a timely manner, or at all, this might not have gotten so complicated and involved so many people.

Please feel free to reach out to me via email at forwardlookout@gmail.com or 608-345-8720 if you have any questions or clarifications or would like to propose a 4th alternative.

Thank you for all you do.